IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

CRIMINAL APPLICATION NO. 2173 OF 2005

Shri Sadashiv @ Keshav Sathe ..Applicant
V/s
M/s Gadre Construction & Others ..Respondents.

Mr. Rajendra Shirodkar, Advocate for the applicant.
Mr. S.S. Dube, Advocate for respondent Nos. 1 to 3
Mr.U.V. Nikar,A.P.P for the State.

CORAM : J.H. BHATIA, J.

DATE : 4TH JUNE , 2007.

P.C.

. Heard Mr. Shirodkar, learned counsel for the applicant, Mr. Dube learned Counsel for respondent Nos.1 to 3 and Mr. Nikam, learned A.P.P.for the State. Perused the copies of relevant record.

2. By this application, the applicant seeks special leave to prefer appeal against the order of acquittal in the complaint under section 138 of Negotiable Instruments Act filed by the applicant/complainant.

3. To state in brief the applicant had entered into an agreement with the respondents on 1/7/1994 for

development of the property. As per that agreement the respondents were to pay amount of Rs.3,70,000/- to the applicant, besides two flats, of total 1600 sq. feet construction, in lieu of the rights to be transferred by the complainant to the respondents. As per the terms of the contract, the applicant was also to provide one room to the respondent as temporary accommodation for the purpose of development and was also to execute a bond of indemnity and affidavit to the effect that the property was not covered under the Urban Ceiling Act. As per the contract, the respondent issued four cheques of different amounts of different dates. First cheque dated 1/7/1994 for amount of Rs. one lakh was encashed. Thereafter two more cheques of 1/10/1994 and 15/10/1994 were also encashed and thus the applicant received amount of Rs. 2,55,000/- out of the total amount of Rs.3,70,000/-. The cheque dated 15/10/1994 for amount of Rs. 1,15,000/- was presented to the bank. However, it was returned with intimation that payment was stopped as per instructions given by the respondents on 29th October, 1994. Thereafter the applicant issued a notice but in spite of statutory notice the payment was not made. Thereafter the applicant filed a complaint under section 138 of Negotiable Instruments Act against the

respondents.

4. After hearing the evidence led by both the parties the learned trial Court acquitted the respondents holding that the complainant/applicant had failed to comply with certain terms of the contract and due to which the respondents had stopped the payment of the said cheque of Rs.1,15,000/-. Being aggrieved by the order of acquittal the complainant seeks to prefer an appeal.

5. After hearing the learned Counsel for the applicant at length, as well as learned Counsel for the respondents and after perusal of the relevant record, I find that there was civil dispute between the parties about the compliance of their respective obligations under the contract dated 1/7/1994. As per the terms of the contract three cheques for total amount of Rs. 2,55,000/- issued by respondents in favour of the applicant were encashed and there was no difficulty. However it appears that the applicant had failed to provide one room accommodation to the respondents and also had failed to file affidavit, as well as bond of indemnity in favour of the respondents due to which they

could not proceed with the development. It appears that the applicant also filed suit for specific performance of the agreement. During the trial it was specifically put to the complainant in the cross-examiantion whether he was still willing to execute the affidavit and indemnity bond as per the terms of the contract but he refused. A specific offer was made to him that if he is wiling to execute the documents and to comply with certain terms of the contract, the respondents were willing to make the payment of the cheque but the complainant refused to comply the terms. It appears that due to failure of the complainant to fulfil his own obligations under the contract, the respondents were compelled to stop the payment of the cheque. In view of these circumstances, the learned trial Court was right in holding that the offence under section 138 of Negotiable Instruments Act was not committed. I find no substance or merit to grant leave to prefer an appeal.

6. Leave refused. The application stands rejected.

(J.H. BHATIA, J.)